



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

DEC 05 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kay Stelling
Genius! Advertising
864 Little Bend Road
Altamonte Springs, FL 32714

RE: MUR 6291
Founding Principles, LLC

Dear Ms. Stelling:

On November 29, 2011, the Federal Election Commission reviewed the allegations in your complaint dated May 17, 2010, and found that on the basis of the information provided in your complaint, and information provided by the respondent, there is no reason to believe Founding Principles, LLC, violated 2 U.S.C. §§ 433, 434 and 441d. Accordingly, on November 29, 2011, the Commission closed the file in this matter.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). The Factual and Legal Analysis, which more fully explains the Commission's findings, is enclosed.

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The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 2 U.S.C. § 437g(a)(8).

Sincerely,

Anthony Herman
General Counsel



BY: Peter G. Blumberg
Assistant General Counsel

Enclosure
Factual and Legal Analysis

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Founding Principles, LLC

MUR: 6291

I. GENERATION OF MATTER

This matter was generated by a complaint filed with the Federal Election Commission by Kay Stelling. *See* 2 U.S.C. § 437g(a)(1).

II. INTRODUCTION

The complaint alleges that Founding Principles, LLC ("Founding Principles" or "FP") may have violated the disclaimer and political committee registration and reporting requirements of the Federal Election Campaign Act of 1971, as amended ("the Act"). Founding Principles sold "TEA Party" lapel pins through its website, "TakeBackTheSeats.com," on which the company pledged to donate 25% of its sales proceeds to unnamed conservative candidates. The complaint alleges that FP failed to include disclaimers on the TakeBackTheSeats.com website and on advertisements it placed on the website of Florida talk radio station WFLA-AM 540. Further, the complaint alleges that FP raised funds for federal candidates through its website, and should therefore have registered with the Commission as a political committee and filed reports disclosing its receipts and disbursements.

The founder of FP, attorney Jeff Feldbahn, responded to the complaint on behalf of FP. The response does not address the disclaimer allegation, but addresses the political committee status allegation by stating that "Founding Principles is not a political action committee," but it is "a for profit limited liability company ... in the business of selling lapel pins." Response at ¶¶ 1 and 2. The response indicates that FP and/or its members intended to make contributions to federal candidates, but that as of the date of the response, they had not done so. Response at ¶ 4.

1 Specifically, FP intended to make 25% of its revenue available for candidate contributions, but
2 planned to execute the contributions by making a taxable distribution to its members in
3 accordance with their respective ownership percentages in the limited liability company, and
4 then each member would make contributions to candidates and/or organizations with the
5 distributed money. Response at ¶ 5.¹

6 The available information indicates that FP has not exceeded the Act's expenditure or
7 contributions thresholds that would trigger political committee status and possible registration
8 and reporting obligations under 2 U.S.C. §§ 433 and 434. See 2 U.S.C. § 431(4)(A). Available
9 information also indicates that FP's advertising and website did not require disclaimers under
10 2 U.S.C. § 441d. Therefore, the Commission finds no reason to believe that Founding
11 Principles, LLC has violated the Act in this matter.

12 **III. FACTUAL AND LEGAL ANALYSIS**

13 **A. Factual Background**

14 The allegations in this matter stem from advertisements FP placed on the website for
15 Florida talk radio station WFLA-AM 540 (www.540wfla.com). The complaint alleges that
16 certain streaming advertisements and a banner ad placed by FP on WFLA-AM's website failed
17 to include disclaimers. Further, the complaint alleges that FP's website, to which the ads
18 directed viewers, also lacked required disclaimers. Lastly, the complaint alleges that FP is a
19 political committee and as such, should register with the Commission and file disclosure reports
20 of its receipts and disbursements. Complaint at 1.

21 The complaint includes an image of the banner advertisement placed on the radio station
22 website promoting www.TakeBackTheSeats.com, the website established by FP to sell TEA-

¹ As of September 27, 2010, FP's website was no longer operating, and it is possible the organization is defunct.

1 party themed pins. The banner advertisement featured images of some of the available pins and
2 the name of the website TakeBackTheSeats.com in bold text. The ad also stated "exercise your
3 right to life, liberty, and the pursuit of happiness" and "Demand a better government!" See ad
4 image in complaint. The complainant also alleges that FP posted other streaming ads for
5 www.TakeBackTheSeats.com on the WFLA website, but did not attach images of those ads to
6 the complaint, and these images could not be located from the WFLA website. See
7 www.540wfla.com. Prior to its closure, FP's website, TakeBackTheSeats.com, contained a
8 mission statement, a list of blog posts, and a "Buy Your Pins Now!" button. The website also
9 had an application for candidates who wished to qualify for a portion of the money to be
10 disbursed by FP. The website did not name any specific candidates or committees supported by
11 the company or its members, and did not indicate that any candidate had applied to be, or had
12 been accepted as, a recipient of any future FP contribution.

13 In its response, FP's founder, Jeff Feldhahn, states that FP is a Georgia "for-profit limited
14 liability company composed of multiple members, ... in the business of selling lapel pins..."
15 Response at ¶¶ 1 and 2. The website offered the pins for \$4.00 each, 3 for \$11.00, or 5 for
16 \$18.00, and FP's sales website appeared to be similar to other websites in the same sales field, in
17 that it made sales directly on-line, accepted credit cards, and charged sales taxes and shipping
18 fees.²

19 The response continues that "the individual members of Founding Principles have
20 committed to providing contributions to political candidates or organizations that support
21 conservative political beliefs." Response at ¶ 2. The plan to make these contributions, as

² Examination of www.cafepress.com, an on-line marketplace that sells politically-themed buttons among thousands of other customizable items, indicates that numerous political buttons or pins are commercially available in the \$3-\$5 range. A similar site, www.zazzle.com, offers political buttons for \$1.95-\$5. (Sites last visited July 13, 2011).

1 explained on the TakeBackTheSeats.com website and in FP's response, is that 25% of the
2 company's sales revenue will be designated for contributions to candidates or organizations that
3 support conservative political beliefs. *Id.* Though the website contained an application for
4 candidates who would like to be considered for receipt of the proceeds, it is unclear how FP
5 would decide to act on these applications, if any were received. *See*
6 www.TakeBackTheSeats.com. Nonetheless, FP stated that once it identifies those candidates or
7 organizations meriting support, "Founding Principles will make a taxable distribution to its
8 members in accordance with their respective ownership percentages in the LLC, and then each
9 member will make individual contributions to candidates and/or organizations – while remaining
10 within the FEC's Individual Contribution Limits." Response at ¶ 5. The website also included a
11 statement at the bottom of the home page stating "NOTICE: All transactions will be in
12 compliance with the Federal Election Commission Guidelines for contributions." *See*
13 www.TakeBackTheSeats.com. The response states that no contributions had yet been made
14 (although it has sold merchandise valued at \$2,635), and it appears that no candidates have been
15 selected to receive contributions, based on the last visible version of the website. Response at ¶
16 4.

17 **B. Legal Analysis**

18 **1. Political Committee Status**

19 The Act defines a "political committee" as any committee, club, association, or other
20 group of persons that receives "contributions" or makes "expenditures" for the purpose of
21 influencing a federal election which aggregate in excess of \$1,000 during a calendar year.
22 2 U.S.C. § 431(4)(A). The Act defines a contribution as "any gift, subscription, loan, advance,
23 or deposit of money or anything of value made by any person for the purpose of influencing any

1 election for Federal office.” 2 U.S.C. § 431(8)(A)(i). An expenditure is “any purchase,
2 payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any
3 person for the purpose of influencing any election for Federal office.” 2 U.S.C. § 431(9)(A)(i).
4 An organization will not be considered a “political committee” unless its “major purpose is
5 Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate).” Political
6 Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7,
7 2007). *See Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*
8 (*MCFL*), 479 U.S. 238, 262 (1986). Political committees must register with the Commission and
9 must file disclosure reports detailing all contributions and expenditures. *See* 2 U.S.C. §§ 433 and
10 434.

11 In analyzing whether FP has triggered political committee status, we conclude there is no
12 information showing it received over \$1,000 in contributions or made over \$1,000 in
13 expenditures. Neither the complaint nor the response (nor the www.takebacktheseats.com
14 website) indicates that FP solicited contributions for any clearly identified candidate or election
15 before shutting down the FP website. The response states that FP has sold \$2,635 worth of lapel
16 pins, which would result in it distributing \$658.75 for contributions if FP followed through with
17 its plan to distribute 25% of proceeds for contributions. However, at this point, Respondent
18 stated that “no distributions/contributions have yet been made by Founding Principles or its
19 individual members,” which would mean that FP has not yet made any contributions to federal
20 Committees. *See* Response at ¶ 4, *see also* 2 U.S.C. § 431(8). A search of reports filed with the
21 Commission for any contributions from FP or the two names that public information indicates
22 are associated with FP, Jeff Feldhahn and David Gilmore, has produced no information that
23 would contradict this assertion in the Response.

1 While it is clear FP has neither solicited nor made any direct contributions, we also
2 conclude that its plan does not appear to generate in-kind contributions or expenditures either
3 through the sale of the TEA Party memorabilia or through the actual cost of manufacturing the
4 items. The Commission has addressed in numerous Advisory Opinions whether plans to create
5 and sell memorabilia related to federal candidates or committees generated contributions that
6 must be recorded and reported to the Commission. *See, e.g.*, AO 1988-17 (Election Concepts,
7 Inc.), AO 1989-21 (Create A Craft), and AO 1994-30 (Conservative Concepts, Inc.). However,
8 all of these AOs involved plans to enter into contracts or agreements with specific candidates or
9 committees to produce desired candidate-specific products, whereas here FP is acting
10 independently in producing and selling its own pins without reference in its advertising or on its
11 website to specific candidates or committees.

12 Nevertheless, portions of prior commercial sales plans considered by the Commission
13 may be relevant to this analysis. In AO 1988-17 (Election Concepts, Inc.), the Commission
14 conditionally approved the sale of candidate-specific medallions directly to the public after the
15 1988 election, stating that "so long as ECI pursues this venture on a commercial basis for the
16 purpose of making a profit, the plan is not prohibited by the Act." *See* AO 1988-17 (Election
17 Concepts, Inc.) at 3. Similarly, FP's sales appear to be more like *bona fide* commercial activity.
18 In prior MURS and AOs, the Commission has repeatedly considered whether a plan to market
19 merchandise or media related to a candidate or party generated contributions by providing
20 something of value to the candidate or committee, or whether the plan was a profit-making
21 enterprise that did not generate contributions. *See* AO 1989-21 (Create A Craft) and MURs
22 1166/1180 (Franklin Mint/DNC and RNC) (Commission found sales plans to be generating
23 contributions), *but see* AO 1988-17 (Election Concepts, Inc.), AO 1994-30 (Conservative

1 Concepts, Inc.), AO 2008-10 (voterVoter.org), MURs 5474/5539 (Dog Eat Dog Films, Inc., and
2 Fahrenheit 9/11)(Commission found sales plans not to be generating contributions). FP states it
3 is a for-profit organization in the business of selling lapel pins, and we have no information that
4 FP's pin sales have generated any contributions for a specific committee. Thus, FP's sales
5 activities appear to be *bona fide* commercial activity, and have not generated in-kind
6 contributions.

7 Based on the foregoing, FP does not appear to have reached the threshold of
8 contributions or expenditures which aggregate in excess of \$1,000 during a calendar year, thus it
9 has not triggered political committee status and has no registration or reporting obligations to the
10 Commission. As such, there is no need to consider whether FP's major purpose is federal
11 campaign activity. In sum, there is no reason to believe that FP has triggered political committee
12 status, and therefore there is no reason to believe that Founding Principles LLC violated 2 U.S.C.
13 §§ 433 and 434.

14 **2. Disclaimers**

15 The complaint alleges that FP failed to include disclaimers on the
16 TakeBackTheSeats.com website and on advertisements it placed on WFLA's website. The
17 following communications must include disclaimers: (1) all public communications made by a
18 political committee; (2) all public communications by any person that expressly advocate the
19 election or defeat of a clearly identified candidate; (3) all public communications by any person
20 that solicit any contribution; and (4) all electioneering communications by any person. 2 U.S.C.
21 § 441d, 11 C.F.R. § 110.11(a). A public communication is a communication made by means of
22 any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising
23 facility, mass mailing, or telephone bank to the general public, or any other form of general

1 public political advertising. 11 C.F.R. § 100.26. The term “general public political advertising”
2 shall not include communications over the Internet, except for communications placed for a fee
3 on another person's Web site. *Id.* However, disclaimers are required for Internet websites of
4 political committees available to the general public. 11 C.F.R. § 110.11(a)(1). Express
5 advocacy includes a communication that “uses phrases ... campaign slogan(s) or individual
6 word(s), which in context can have no other reasonable meaning than to urge the election or
7 defeat of one or more clearly identified candidate(s)...” 11 C.F.R. § 100.22(a). *See also*
8 11 C.F.R. § 100.22(b). An electioneering communication is a communication distributed by
9 means of broadcast, cable, or satellite communication that refers to a clearly identified candidate
10 for Federal office and is distributed to a targeted relevant electorate within prescribed time
11 frames (30 days before a primary or 60 days before the general election). 11 C.F.R. § 100.29.

12 FP had no obligation to place disclaimers on its own website or on the advertisement(s) it
13 placed on the radio station website. FP’s ad and website are not included in the first category of
14 communications that require disclaimers because, as shown above, FP is not a political
15 committee.³ *See* 11 C.F.R. § 110.11(a)(1). Second, the only available FP advertisement, the
16 banner ad, does not include express advocacy because it does not advocate for or against any
17 clearly identified candidate. *See* 11 C.F.R. §§ 100.22; 110.11(a)(2). FP’s banner advertisement
18 featured images of some of the available pins and the name of FP’s website,
19 TakeBackTheSeats.com, in bold lettering. The ad also stated “exercise your right to life, liberty,
20 and the pursuit of happiness” and “Demand a better government!” *See* ad image in complaint.
21 Thus, the ad does not expressly advocate for the election or defeat of any clearly identified
22 candidate, and therefore does not require a disclaimer under 11 C.F.R. § 110.11(a)(2). Third,

³ In addition, FP’s website is not a public communication, and therefore 11 C.F.R. § 110.11(a)(2)-(4) does not apply to FP’s website.

1 FP's advertisement does not solicit contributions. FP's advertisement includes no request for
2 any contribution or donation of funds, and does not even directly advertise that FP has pins for
3 sale, as it merely shows images of the pins. Therefore, FP's advertisement does not require a
4 disclaimer under 11 C.F.R. § 110.11(a)(3). Lastly, FP's advertisement does not require a
5 disclaimer under 11 C.F.R. § 110.11(a)(4) because the text and images of the advertisement are
6 not an electioneering communication in that they do not refer to a clearly identified candidate for
7 Federal office and were disseminated over the internet. See 11 C.F.R. § 110.11(a)(4), *see also*
8 11 C.F.R. § 100.29(c)(1). Therefore, there is no reason to believe Founding Principles violated
9 2 U.S.C. § 441d.